IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6934 of 2005

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHAMANBHAI MAFABHAI JHALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6934 of 2005

MS SONAL R SHAH for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 1,2

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 25/04/2005

ORAL JUDGEMENT

The only issue, which requires consideration and

adjudication in this petition, under Article 226 of the Constitution of India, now, after the long spell of 8 years after the retirement, as his retirement date is 30/6/1997, is the claim and entitlement for the payment of leave encashment on retirement of the petitioner who has put in 38 years of service.

2. After having given anxious thoughts and consideration to the factual profile emerging from the present petition and the relevant documents, in support of the affidavit of the petitioner which have remained uncontroverted, as no affidavit-in-reply has been filed, this Court has no hesitation in finding, that the rightful claim for leave encashment payment is not considered and decided for a long period of 8 years after the retirement of the petitioner who has put in 38 years of service with the Respondent No.2-Nargarpalika. Thus the consolidated amount of salary which was drawn and paid to the petitioner before retirement was Rs.3,213/p.m., the total unused privilege leave in terms of days as on the date of retirement of the petitioner came to 218 & 1/2 days. The service dossiers of the petitioner also manifestly indicates and supports this version. It is, therefore, for the petitioner on that basis has claimed amount Rs.23,401/- towards the amount of leave encashment, which is even calculated by the respondent-authorities.

3. Despite several representations, requests and efforts to the Respondent-Nagarpalika culminating into last letter dated 7/1/2005 nothing has happened and no concrete step came to be taken resulting into non-payment of due and payable amount of leave encashment to the petitioner for a long spell of almost 8 years and that too a sum of Rs. 23,401/- . This claim, borne out from the record and the factual profile of the present petition, has remained virtually undefended and not contested by the respondents and for the obvious reasons which could be an indefeasible claim. Mr. Dharmendra V.Champaneri, Sanitary Inspector, Viramgam Nagarpalika is present in the Court who has also confirmed that the amount is not paid in the financial constraint. It is directed to make the payment of an amount of Rs.23,401/- for the due and payable amount for leave encashment after the retirement of the petitioner with interest @ 9% for the entire period of 8 years on or before July, 2005, failing which, the rate of interest shall be 12%. The Respondent No.1-Director of Municipalities is directed to monitor and see that the direction issued against the Respondent No.2 is expeditiously complied with by the Respondent No.2. Hence, Special Civil Application shall

stand disposed of. Rule made absolute without any order as to costs.

Direct Service is permitted.

(DR. J. N. Bhatt, J.)

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